

§ 9901.107

bargain and consult), and 9901.920 (regarding impasse procedures).

(2)(i) For the purpose of this section, the term “employee representatives” includes representatives of labor organizations with exclusive recognition rights for units of DoD employees, as determined pursuant to subpart I of this part.

(ii) The Secretary, at his or her sole and exclusive discretion, may determine the number of employee representatives to be engaged in the continuing collaboration process. However, each national labor organization with one or more bargaining units accorded exclusive recognition in the Department affected by an implementing issuance will be provided the opportunity to participate in the continuing collaboration process.

(iii) Each national labor organization with multiple collective bargaining units accorded exclusive recognition will determine how its units will be represented within the limitations imposed by the Secretary under paragraph (a)(2)(ii) of this section.

(3)(i) Within timeframes specified by the Secretary, employee representatives will be provided with an opportunity to submit written comments to, and to discuss their views and recommendations with, DoD officials on any proposed final draft implementing issuances. If views and recommendations are presented by employee representatives, the Secretary must consider these views and recommendations before taking final action. The Secretary will provide employee representatives a written statement of the reasons for taking the final action regarding the implementing issuance.

(ii) To the extent that the Secretary determines necessary, employee representatives will be provided with an opportunity to discuss their views with DoD officials and/or to submit written comments, at initial identification of implementation issues and conceptual design and/or at review of draft recommendations or alternatives.

(4) Employee representatives will be provided with access to information for their participation in the continuing collaboration process to be productive.

(5) Nothing in the continuing collaboration process will affect the right of

5 CFR Ch. XCIX (1–1–07 Edition)

the Secretary, Deputy Secretary, Principal Staff Assistants, or Secretaries of the Military Departments to determine the content of implementing issuances and to make them effective at any time.

(b) *Continuing collaboration with other interested organizations.* The Secretary may also establish procedures for continuing collaboration with appropriate organizations that represent the interests of a substantial number of nonbargaining unit employees.

§ 9901.107 Relationship to other provisions.

(a)(1) The provisions of title 5, U.S. Code, are waived, modified, or replaced to the extent authorized by 5 U.S.C. 9902 to conform to the provisions of this part.

(2) This part must be interpreted in a way that recognizes the critical national security mission of the Department, and each provision of this part must be construed to promote the swift, flexible, effective day-to-day accomplishment of this mission, as defined by the Secretary. The interpretation of the regulations in this part by DoD and OPM must be accorded great deference.

(b) For the purpose of applying other provisions of law or Governmentwide regulations that reference provisions under chapters 31, 33, 35, 43, 51, 53, 55 (subchapter V only), 71, 75, and 77 of title 5, U.S. Code, the referenced provisions are not waived but are modified consistent with the corresponding regulations in this part, except as otherwise provided in this part (including paragraph (c) of this section) or in implementing issuances. Applications of this rule include, but are not limited to, the following:

(1) If another provision of law or Governmentwide regulations requires coverage under one of the chapters modified or waived under this part (*i.e.*, chapters 31, 33, 35, 43, 51, 53, 55 (subchapter V only), 71, 75, and 77 of title 5, U.S. Code), DoD employees are deemed to be covered by the applicable chapter notwithstanding coverage under a system established under this part. Selected examples of provisions that continue to apply to any DoD employees

Department of Defense

§ 9901.202

(notwithstanding coverage under subparts B through I of this part) include, but are not limited to, the following:

(i) Foreign language awards for law enforcement officers under 5 U.S.C. 4521 through 4523;

(ii) Pay for firefighters under 5 U.S.C. 5545b;

(iii) Recruitment, relocation, and retention payments under 5 U.S.C. 5753 through 5754; and

(iv) Physicians' comparability allowances under 5 U.S.C. 5948.

(2) In applying the back pay law in 5 U.S.C. 5596 to DoD employees covered by subpart H of this part (dealing with appeals), the reference in section 5596(b)(1)(A)(ii) to 5 U.S.C. 7701(g) (dealing with attorney fees) is considered to be a reference to a modified section 7701(g) that is consistent with § 9901.807(f)(6).

(3) In applying the back pay law in 5 U.S.C. 5596 to DoD employees covered by subpart I of this part (dealing with labor relations), the references in section 5596 to provisions in chapter 71 are considered to be references to those particular provisions as modified by subpart I of this part.

(c) Law enforcement officer special base rates under section 403 of the Federal Employees Pay Comparability Act of 1990 (section 529 of Pub. L. 101-509) do not apply to employees who are covered by an NSPS classification and pay system established under subparts B and C of this part.

(d) Nothing in this part waives, modifies or otherwise affects the employment discrimination laws that the Equal Employment Opportunity Commission (EEOC) enforces under 42 U.S.C. 2000e *et seq.*, 29 U.S.C. 621 *et seq.*, 29 U.S.C. 791 *et seq.*, and 29 U.S.C. 206(d).

§ 9901.108 Program evaluation.

(a) The Secretary will evaluate the regulations in this part and their implementation. The Secretary will provide designated employee representatives with an opportunity to be briefed and a specified timeframe to provide comments on the design and results of program evaluations.

(b) Involvement of employee representatives in the evaluation process does not waive the rights of any party under applicable law or regulations.

Subpart B—Classification

GENERAL

§ 9901.201 Purpose.

(a) This subpart contains regulations establishing a classification structure and rules for covered DoD employees and positions to replace the classification structure and rules in 5 U.S.C. chapter 51 and the job grading system in 5 U.S.C. chapter 53, subchapter IV, in accordance with the merit principle that equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.

(b) Any classification system prescribed under this subpart will be established in conjunction with the pay system described in subpart C of this part.

§ 9901.202 Coverage.

(a) This subpart applies to eligible DoD employees and positions listed in paragraph (b) of this section, subject to a determination by the Secretary under § 9901.102(b)(2).

(b) The following employees of, or positions in, DoD organizational and functional units are eligible for coverage under this subpart:

(1) Employees and positions that would otherwise be covered by the General Schedule classification system established under 5 U.S.C. chapter 51;

(2) Employees and positions that would otherwise be covered by a prevailing rate system established under 5 U.S.C. chapter 53, subchapter IV;

(3) Employees in senior-level (SL) and scientific or professional (ST) positions who would otherwise be covered by 5 U.S.C. 5376;

(4) Members of the Senior Executive Service (SES) who would otherwise be covered by 5 U.S.C. chapter 53, subchapter VIII, subject to § 9901.102(d); and

(5) Such others designated by the Secretary as DoD may be authorized to include under 5 U.S.C. 9902.